

IN THE HIGH COURT OF BOMBAY AT GOA

LETTER PATENT APPEAL NO. 3 OF 2006

SMT. JANI HARISCHANDRA NAIK
KHANDEPARKAR AND 5 ORS.,

....Appellants

Versus

MR. RAJARAM ANANT AMONKAR AND 15
ORS.,

....Respondents

Mr. S. D. Lotlikar, Senior Advocate with
Advocate for the Appellants.

Mr. Marvin D'Souza,

Mr. N. Costa Frias, Advocate for the Respondent No.1.

Coram:- S.K. SHAH &
N. A. BRITTO, JJ.

Date:- 26th February, 2007

P.C.:-

Heard the learned Counsel on both sides.

By this appeal, the Order passed by the learned Single Judge on 28-6-2006 is being assailed.

Application for registration of Mundkarship was filed before the Mamlatdar. The Mamlatdar decided the matter in favour of the appellants holding the Mundkarship. The respondent no.1 had entered into an agreement for purchase of the suit property and that agreement was made in 1982. In the meantime, however, when the matter was pending before the Mamlatdar the present respondent no.1 purchased the plot by conveyance made in January, 1988. In 1982, the applicants had obtained an injunction against respondent no.1. Thus in view of the fact that the respondent no.1 had agreed to purchase the suit property from the Bhatkar and there was an agreement between the original Bhatkar and the

respondent, the applicants did not make the respondent no.1 party to the proceedings before the Mamlatdar.

The decision of the Mamlatdar was therefore challenged by the respondent no.1 before the Additional Collector. In 1982, the respondent no.1 had also filed an application for condonation of delay in filing the appeal. The respondent no.1 had also filed an application seeking leave to appeal and production of the documents. The Additional Collector considered all these applications and held that the respondent no.1 was necessary party to the proceedings before the Mamlatdar and therefore condoned the delay in filing the appeal. The Additional Collector allowed the appeal and set aside the Order passed by the Mamlatdar and remanded the matter back to the Mamlatdar for considering the case afresh after the respondent no.1 was joined as party. The orders of the Additional Collector was challenged before the Administrative Tribunal and the Administrative Tribunal confirmed the order of the Additional Collector. The said order passed by the Administrative Tribunal was assailed before the learned Single Judge and the learned Single Judge dismissed the Writ Petition and in view of that order, the present Letter Patent Appeal is filed.

The learned Counsel for the appellants submits that the important aspect was that the learned Counsel was not heard on merits by the Additional Collector with regard to the merits of the matter and without being heard, the Additional Collector has set aside the order. The learned Counsel also submits that the respondent no.1 cannot be joined as a party because he had only agreed to purchase the property and therefore it was not necessary for him to join respondent no.1 as party. The learned Counsel for the respondent no.1 further submits that the applicants had knowledge of the agreement with respondent no.1 and that the appellants had also obtained an injunction from respondent no.1 in 1982. He also submits that it was necessary for the appellants to join respondent no.1 as party to the proceedings before Mamlatdar and therefore the orders passed by the Additional Collector as well as Tribunal were correct.

We have considered all the aspects and we feel that there is no illegality in passing the order by the learned Single Judge. The question of considering the aspect on merits did not arise before the Additional Collector as the Additional Collector has set aside the order of the Mamlatdar merely on the ground that respondent no.1 was not joined as party in the proceedings before the Mamlatdar. The Additional Collector did not consider the aspect on its merits. The order of remand was proper and that has been confirmed by the learned Single Judge. We do not find any ground for interfering with the order and considering the above, the Appeal is dismissed.

At this stage, the learned Counsel for the appellants states that the proceedings have taken almost 27 years and therefore requests for directing the Mamlatdar to dispose of the proceedings on its merits expeditiously. In view of this fact, it is directed that the Mamlatdar shall decide the Mundkarship application filed by the appellants within a period of three months from the date of receipt of this order. In case the order of the Mamlatdar is challenged, the Additional Collector and the Administrative Tribunal shall also decide the matter before them expeditiously.

S.K. SHAH, J.

N. A. BRITTO, J.

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